

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**  
JAN 21 2010

WARREN VINCENT LEE,  
Plaintiff,

vs.

SHANE WYATT et al.,  
Defendants.

ROBERT D. DENNIS, JR.  
U.S. DIST. COURT, WESTERN DISTRICT OF OKLA.  
BY TLH DEPUTY

No. CIV-07-773-W

**ORDER**

On December 28, 2009, United States Magistrate Judge Gary M. Purcell issued a Fourth Supplemental Report and Recommendation in this matter and recommended that this action be dismissed without prejudice to defendant "John Doe" a/k/a Paul Matthews for failure to timely effect service of process under Rule 4(m), F.R.Civ.P. Plaintiff Warren Vincent Lee was advised of his right to object, but no objections to the Fourth Supplemental Report and Recommendation have been filed within the allotted time.

Upon review of the record, the Court concurs that dismissal without prejudice is warranted not only as recommended by Magistrate Judge Purcell but also as requested by Lee. Lee has advised the Court that

[f]rom all information available to . . . [him], Defendant has moved/re-located and left no forwarding address. As a result, Plaintiff, an inmate incarcerated in prison, is at such a disadvantage . . . that Dismissal Without Prejudice would best serve the interest of justice in this case.

Motion to Dismiss Without Prejudice [Doc. 252] at 1.

Accordingly, the Court

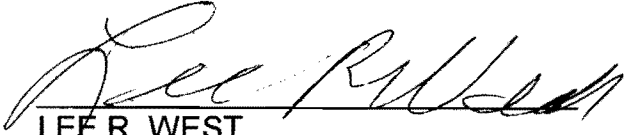
(1) ADOPTS the Fourth Supplemental Report and Recommendation [Doc. 254] issued on December 28, 2009;

(2) GRANTS Lee's Motion to Dismiss Without Prejudice to the extent it is consistent with the Fourth Supplemental Report and Recommendation;

(3) DISMISSES without prejudice defendant "John Doe" a/k/a Paul Matthews; and

(4) because all issues against all parties have now been resolved in this matter, ORDERS that a final judgment<sup>1</sup> shall issue forthwith.<sup>2</sup>

ENTERED this 21<sup>st</sup> day of January, 2010.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>Because the Court's Orders and Judgment [Docs. 199, 200, 201, 202] issued on June 5, 2009, may lack the necessary articulation of the reasons regarding certification under Rule 54(b), F.R.Civ.P., the Court sets forth its findings as follows: Because the claims Lee asserted against defendants Lt. G.G. Music, Jr., Michelle Stallings, Jay Belt, D.O., individually and in his official capacity, which were based Lee's arrest and on events occurring immediately after his arrest and during his detention at Grady County Detention Center, were sufficiently separable from those claims that remained to be adjudicated against the other defendants, the Court deemed this matter final as to these three defendants. Accordingly, the Court in its discretion concluded that there was no just reason for delaying the entry of judgment as to Lee's claims against these defendants and expressly directed that judgment be entered in their favor.

<sup>2</sup>The Court notes that Lee filed a Notice of Intent to Appeal [Doc. 244] that was docketed in the United States Court for Appeals for the Tenth Circuit on November 30, 2009, wherein he indicated his desire to appeal the Court's Order dated October 21, 2009. The Court further notes that on January 4, 2010, the circuit court filed a "presumption of denial for leave to proceed in forma pauperis." The record before this Court does not show that Lee ever requested leave to proceed on appeal in forma pauperis.